

AMENDED IN ASSEMBLY JUNE 19, 2003

AMENDED IN SENATE MAY 8, 2003

**SENATE BILL**

**No. 298**

---

---

**Introduced by Senator Dunn**

February 19, 2003

---

---

*An act to amend Sections 3050 and 3066 of, and to add Section 3065.2 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

SB 298, as amended, Dunn. Vehicles: New Motor Vehicle Board: powers and duties.

**Existing**

(1) *Existing* law requires the New Motor Vehicle Board to consider any matter submitted by any person concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. After that consideration, the board is authorized, among other things, to undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

This bill would ~~set forth a finding and declaration of the Legislature that it is the intent of the Legislature to review the jurisdiction of the board in light of conflicting trial court and state court of appeal decisions~~ *recast the authority of the board as to undertaking the above mediation, arbitration, or resolution practices to specify that the authority applies to a retail consumer of goods or services furnished by*

a new motor vehicle dealer, rather than any member of the public, and a new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(2) Existing law makes it unlawful for the holder of a dealer's license and a licensed manufacturer, manufacturer branch, distributor, or distributor branch to engage in certain conduct.

This bill would authorize a franchisee, as defined, to file a protest with the board protesting an act or omission on the part of its franchisor, as defined, that alleges a violation of the provisions described above. The bill would provide that if the board finds a violation and sustains the protest, the franchisor would be required to immediately discontinue the act or correct the omission, or both. The bill would make corresponding changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1.—The Legislature hereby finds and declares that~~  
 2     ~~it is the intent of the Legislature to review the jurisdiction of the~~  
 3     ~~New Motor Vehicle Board in light of conflicting trial court and~~  
 4     ~~state court of appeal decisions.~~

5     SECTION 1. Section 3050 of the Vehicle Code is amended to  
 6     read:

7     3050. The board shall do all of the following:

8     (a) Adopt rules and regulations in accordance with Chapter 3.5  
 9     (commencing with Section 11340) of Part 1 of Division 3 of Title  
 10    2 of the Government Code governing those matters that are  
 11    specifically committed to its jurisdiction.

12    (b) Hear and determine, within the limitations and in  
 13    accordance with the procedure provided, an appeal presented by  
 14    an applicant for, or holder of, a license as a new motor vehicle  
 15    dealer, manufacturer, manufacturer branch, distributor, distributor  
 16    branch, or representative when the applicant or licensee submits  
 17    an appeal provided for in this chapter from a decision arising out  
 18    of the department.

19    (c) Consider any matter *submitted by a person* concerning the  
 20    activities or practices of ~~any~~ a person applying for or holding a  
 21    license as a new motor vehicle dealer, manufacturer, manufacturer  
 22    branch, distributor, distributor branch, or representative pursuant

to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. After that consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between ~~any member of the public~~ *a retail consumer of goods or services furnished by a new motor vehicle dealer and any a new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.*

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of ~~any a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.~~

(d) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, ~~or~~ 3065.1, *or 3065.2.* A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

(e) Notwithstanding subdivisions (c) and (d), the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

*SEC. 2. Section 3065.2 is added to the Vehicle Code, to read: 3065.2. A franchisee may file a protest with the board protesting an act or omission on the part of its franchisor that alleges a violation of Section 11713.2 or 11713.3, or both. If the*

1 *board finds that a violation exist and sustains the protest filed*  
2 *under this section, the franchisor shall immediately discontinue*  
3 *the act or correct the omission, or both.*

4 *SEC. 3. Section 3066 of the Vehicle Code is amended to read:*

5 3066. (a) Upon receiving a notice of protest pursuant to  
6 Section 3060, 3062, 3064, 3065, ~~or~~ 3065.1, *or* 3065.2, the board  
7 shall fix a time, which shall be within 60 days of the order, and  
8 place of hearing, and shall send by registered mail a copy of the  
9 order to the franchisor, the protesting franchisee, and all  
10 individuals and groups which have requested notification by the  
11 board of protests and decisions of the board. Except in any case  
12 involving a franchisee who deals exclusively in motorcycles, the  
13 board or its secretary may, upon a showing of good cause,  
14 accelerate or postpone the date initially established for a hearing,  
15 but in no event shall the hearing be rescheduled more than 90 days  
16 after the board's initial order. For the purpose of accelerating or  
17 postponing a hearing date, "good cause" includes, but is not  
18 limited to, the effects upon, and any irreparable harm to, the parties  
19 or interested persons or groups if the request for a change in  
20 hearing date is not granted. The board, or a hearing officer  
21 designated by the board, shall hear and consider the oral and  
22 documented evidence introduced by the parties and other  
23 interested individuals and groups, and the board shall make its  
24 decision solely on the record so made. Chapter 4.5 (commencing  
25 with Section 11400) of Part 1 of Division 3 of Title 2 of the  
26 Government Code and Sections 11507.3, 11507.6, 11507.7,  
27 11511, 11513, 11514, 11515, and 11517 of the Government Code  
28 apply to these proceedings.

29 (b) In any hearing on a protest filed pursuant to Section 3060  
30 or 3062, the franchisor shall have the burden of proof to establish  
31 that there is good cause to modify, replace, terminate, or refuse to  
32 continue a franchise. The franchisee shall have the burden of proof  
33 to establish that there is good cause not to enter into a franchise  
34 establishing or relocating an additional motor vehicle dealership.

35 (c) In any hearing on a protest alleging a violation of, or filed  
36 pursuant to, Section 3064, 3065, ~~or~~ 3065.1, *or* 3065.2, the  
37 franchisee shall have the burden of proof, but the franchisor has the  
38 burden of proof to establish that a franchisee acted with intent to  
39 defraud the franchisor where that issue is material to a protest filed  
40 pursuant to Section 3065 or 3065.1.

1 (d) A member of the board who is a new motor vehicle dealer  
2 may not participate in, hear, comment, or advise other members  
3 upon, or decide, any matter involving a protest filed pursuant to  
4 this article unless all parties to the protest stipulate otherwise.

O

